

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-02-TP-575
)	
Everald Oliver Brown)	NAL/Acct. No.200332700018
2409 North Hastings Street)	
Orlando, Florida 32808-4320)	FRN 0007951106
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: March 31, 2003

By the Enforcement Bureau, Tampa Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Everald Oliver Brown (“Mr. Brown”) apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000) for willful violation of Section 301 of the Communications Act of 1934, as amended (“Act”).¹ Specifically, we find Mr. Brown apparently liable for operating a radio station on the frequency of 95.9 MHz without Commission authorization.

II. BACKGROUND

2. On October 30, 2002, two agents from the Commission’s Tampa Field Office working in the Orlando, Florida, area observed an FM radio station operating on 95.9 MHz. The voice broadcasting on the radio station identified the station only as “95.9.” FCC databases showed no record of a broadcast station licensed for 95.9 MHz in the Orlando area. Using direction-finding equipment and techniques, the agents determined that the station was broadcasting from the Rum Runner Caribbean Restaurant & Lounge in the Village West Shopping Center, 6444 W. Colonial Drive, Orlando, Florida. The agents took field strength measurements of the station’s signal and determined that the station required a license to operate.² The FCC’s records showed no license had been issued for this operation.

3. Still on October 30, 2002, the Tampa Field Office agents inspected the station broadcasting on 95.9 MHz at the Rum Runner Caribbean Restaurant & Lounge. The manager of the club, Steven J. Burke, led the agents to a room containing the radio station. A man was at the controls of the radio station. Mr. Burke introduced this man to the agents as Everald Brown and identified him as the “DJ” of

¹ 47 U.S.C. § 301.

² Section 15.239(b) of the Commission’s Rules, 47 C.F.R. § 15.239(b), provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmissions does not exceed 250 µV/m at three meters. Measurements showed that the field strength of the station’s signal exceeded the permissible level for a non-licensed low-power radio transmitter by 10,462 times.

the station. Mr. Brown also identified himself by his driver's license as Everald Oliver Brown. The agents recognized Mr. Brown's voice as the one they had heard broadcasting on 95.9 MHz and had identified the station as "95.9." Mr. Burke stated that the radio station had been operating at the club for about two weeks. After being warned by the agents about the unlicensed operation, Mr. Brown went to the transmitter and turned it off.

III. DISCUSSION

4. Section 301 of the Act requires that no person shall use or operate any apparatus for the transmission of energy of communications or signals by radio within the United States except under and in accordance with the Act and with a license. On October 30, 2002, Mr. Brown operated radio transmitting equipment on the frequency 95.9 MHz without the required Commission authorization.

5. Based on the evidence before us, we find Mr. Brown willfully³ violated Section 301 of the Act by operating radio transmission apparatus without a license.

6. Pursuant to Section 1.80(b)(4) of the Rules,⁴ the base forfeiture amount for unlicensed operation is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁵ Considering the entire record and applying the factors listed above, this case warrants a \$10,000 forfeiture.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁶ and Sections 0.111, 0.311 and 1.80 of the Rules,⁷ Everald Oliver Brown is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willful violation of Section 301 of the Act by operating radio transmitting equipment on the frequency 95.9 MHz without benefit of the required Commission authorization.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Everald Oliver Brown SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

⁴ 47 C.F.R. § 1.80(b)(4).

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. §§ 0.111, 0.311, 1.80.

order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

10. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

13. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Everal Oliver Brown, 2409 North Hastings Street, Orlando, FL, 32808-4320.

FEDERAL COMMUNICATIONS COMMISSION

Ralph M. Barlow
Tampa Field Office, Enforcement Bureau

Attachment

⁸ See 47 C.F.R. § 1.1914.